

JUN 10 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JDA SOFTWARE, INC., an Arizona  
corporation,

Plaintiff - Appellant,

v.

TOM BISSETT,

Defendant - Appellee.

No. 07-16091

D.C. No. CV-07-00720-PHX-FJM

ORDER

Before: B. FLETCHER, CANBY, and RAWLINSON, Circuit Judges.

Defendant-appellee Bissett has moved to dismiss this appeal from a preliminary injunction as moot. The motion is DENIED.

Bissett contends that, because the term of the non-competition agreement has expired during the pendency of this appeal, the appeal has become moot. We reject the contention for two reasons. First, JDA seeks enforcement of the agreement's confidentiality provisions as well as its non-competition agreement. The confidentiality provisions have no fixed term. That controversy remains live.

Second, JDA seeks to enforce a provision of the non-competition agreement that extends its term for any period of time in which Bissett is found to be in

violation of the covenant not to compete. The validity of that term is in dispute between the parties, and the dispute has not been addressed by the district court. On this record, we cannot say that Bissett has established that a case or controversy no longer exists over the preliminary injunction.

**MOTION TO DISMISS FOR MOOTNESS DENIED.**